

REMARKS

1. Declaration

A substitute Declaration will be submitted promptly after execution.

2. Specification

As requested in the Office Action, the specification has been amended to remove references to an embedded hyperlink and to identify a trademark by generic terminology. No new matter has been added by these amendments.

3. Claims

Claims 1, 3, 4, 7, and 10 – 13 have been examined. Claims 1, 3, 4, 7, and 10 – 13 stand rejected under 35 U.S.C. §112, ¶2; Claims 1, 3, and 4 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Pat. No. 6,613,512 or U.S. Pat. No. 6,524,790 (collectively “Kopf” in light of their duplicate disclosure); Claim 7 stands rejected under 35 U.S.C. §103(a) as unpatentable over Kopf in view of J. Microscopy, 197(2) 2/2000, 136 – 149 (“Squire”); and Claims 10 – 13 stand rejected under 35 U.S.C. §103(a) as unpatentable over Kopf in view of Cytometry, 40:102 – 108, 2/2000 (“Armstrong”). Claim 13 stands objected to because of an informality.

a. §112 Rejections

Several amendments have been made to the claims to overcome the §112 rejections. In particular, to address the concern that Claim 1 is vague and indefinite, the

preamble has been amended to distinguish between the characteristic parameter of an analyte, which is intrinsically independent of a flow velocity of the analyte, and a measurement of the characteristic parameter of the analyte, which is capable of being influenced by or dependent on the velocity of the analyte. That is, the recited method is concerned with determining the intrinsic characteristic parameter under circumstances where an apparent velocity dependence is introduced by measurement conditions (*see, e.g.*, Application, p. 2, ll. 7 – 21). Amendments have been made to the body of the claim for consistency with this clarification.

The dependence of Claims 7 and 10 has been amended to address the §112 rejections of those claims. In doing so, Claim 7 has incorporated limitations previously recited in canceled Claim 6. No new matter has been added by any of these amendments.

b. Prior Art Rejections

The prior-art rejections rely on a construction of Kopf as disclosing the measurement of the characteristic parameter within a fluid flow at a plurality of locations. Kopf describes the determination of a reaction rate through measurement of a concentration of products and reactants at a single selected position in a flow, and determining a velocity of a component of the flow (Kopf, Col. 2, ll. 6 – 23). While the Office Action appears to acknowledge that the concentration is measured only at a single detection point (*see, e.g.*, Fig. 1 of Kopf and Col. 7, l. 48 – Col. 8, l. 17), the Office Action takes the position that this corresponds to measurement at a plurality of positions because Kopf “disclose[s] analyte measurement in a continuous flow channel while measuring a signal indicative of the analyte (characteristic parameter) at various time points (plurality of locations along the fluid flow channel)” (Office Action, p. 10).

Such a construction, in which the plurality of locations is equated to a plurality of time points in a continuous flow, has been precluded by amending Claim 1 to recite that the characteristic parameter is measured “within the flow channel at a plurality of different detection zones separated along a flow path of the analyte.” Support for this limitation is provided in the

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Application at, *e.g.*, p. 7, ll. 18 – 21. Since Kopf is directed to a single detection point for measurement, it does not disclose “measuring the characteristic parameter ... at a plurality of different detection zones separated along a flow path of the analyte.”

It is thus respectfully believed that Claim 1 is patentable and that each of the dependent claims is also patentable by virtue of their dependence from a patentable claim.

c. Claim Objection


Claim 13 has been amended as suggested in the Office Action.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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